BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on	)	WC Docket No. 05-337
Universal Service Seeking Comment	)	
on the Merits of Using Auctions to	)	
Determine High-Cost Universal	)	CC Docket No. 96-45
Service Support	)	

REPLY COMMENTS OF THE
OREGON TELECOMMUNICATIONS ASSOCIATION
SMALL COMPANY COMMITTEE
AND
THE WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION

June 21, 2007

The Oregon Telecommunications Association Small Company Committee ("OTASCC")[1] and the Washington Independent Telephone Association ("WITA")[2] file these Reply Comments in support of the adoption of the Federal-State Joint Board on Universal Service ("Joint Board") recommendation to impose an emergency, interim cap ("Emergency Cap") on the receipt of high-cost universal service funds by competitive eligible telecommunications carriers ("ETCs").[3]

SUMMARY AND INTRODUCTION

On May 1, 2007, the Joint Board published its recommendation that the FCC adopt an emergency, interim cap on the amount of high-cost federal universal service fund support that competitive ETCs may receive. The proposed cap would be state-specific based upon the average level of competitive ETC support distributed in that state in 2006. The FCC called for opening comments to be filed on June 6, 2007. These Reply Comments are due June 21, 2007.

OTASCC and WITA are filing these Reply Comments to address arguments that the

[1] The participating members of the OTASCC are Asotin Telephone Company d/b/a TDS Telecom, Beaver Creek Cooperative Telephone Company, Canby Telecom, Cascade Utilities, Inc., Colton Telephone Company, Eagle Telephone System, Inc., Gervais Telephone Company, Helix Telephone Company, Home Telephone Company d/b/a TDS Telecom, Malheur Telephone Company, Midvale Telephone Exchange Incorporated, Molalla Communications, Inc., Monitor Cooperative Telephone Company, Monroe Telephone Company, Mt. Angel Telephone Company, Nehalem Telecommunications, Inc., North-State Telephone Co., Oregon-Idaho Utilities, Inc., Oregon Telephone Corporation, People's Telephone Co., Pine Telephone System, Inc., Pioneer Telephone Cooperative, Roome Telecommunications Inc., St. Paul Cooperative Telephone Association, Scio Mutual Telephone Association, Stayton Cooperative Telephone Company and Trans-Cascades Telephone Company. CenturyTel of Oregon, Inc. and CenturyTel of Eastern Oregon, Inc., while not members of OTASCC, are members of the Oregon Telecommunications Association and support these Comments as well.

[2] The members of WITA joining in these Comments are Asotin Telephone Company d/b/a TDS Telecom, Beaver Creek Telco d/b/a Timberline Telecom, CenturyTel of Washington, Inc., CenturyTel of Cowiche, Inc., CenturyTel of Inter-Island, Inc., Ellensburg Telephone Company d/b/a FairPoint Communications, Hat Island Telephone Company, Hood Canal Telephone Co., Inc. d/b/a Hood Canal Communications, Inland Telephone Company, Kalama Telephone Company, Lewis River Telephone Company, Inc. d/b/a TDS Telecom, Mashell Telecom, Inc. d/b/a Rainier Connect, McDaniel Telephone Co. d/b/a TDS Telecom, Pend Oreille Telephone Company, Pioneer Telephone Company, St. John Co-operative Telephone and Telegraph Company, Tenino Telephone Company, The Toledo Telephone Co., Inc., Western Wahkiakum County Telephone Company, Whidbey Telephone Company and YCOM Networks, Inc d/b/a FairPoint Communications.

[3] High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, Recommended Decision, FCC 07J-1 (released May 1, 2007) ("Recommended Decision").

Emergency Cap is not within the FCC's authority or would be discriminatory to competitive ETCs. OTASCC and WITA also address the arguments that the Emergency Cap would remove both customer choice and expanded wireless offerings.

In these Reply Comments, OTASCC and WITA argue that the FCC does have authority to adopt the Emergency Cap, just as the FCC has imposed other controls on the size of the high-cost fund. In addition, OTASCC and WITA explain that such a cap would not be discriminatory since incumbent ETCs are already under caps or other funding restrictions. OTASCC and WITA then point to recent empirical studies that undercut the claims of some wireless carriers that federal high-cost support increases customer choice and is the basis for increased wireless service offerings in rural areas.

In these Reply Comments, OTASCC and WITA also urge the FCC to quickly move away from the "identical support" rule.

CAPPING COMPETITIVE ETC SUPPORT IS WITHIN THE FCC'S AUTHORITY AND IS NOT DISCRIMINATORY

Predictably, portions of the wireless industry filed comments opposed to the Joint Board's Recommended Decision.[4] Essentially, these Comments present three basic arguments. The first is that the Emergency Cap is beyond the scope of the FCC's authority. The second is that the Emergency Cap is discriminatory against wireless service. The third is that the Emergency Cap would inhibit competition and the customers' ability to receive enhanced wireless offerings. None of these points is well taken.

[4] See, e.g., Comments of CTIA-The Wireless Association™ and Comments of United States Cellular Corporation and Rural Cellular Corporation.

1. The FCC has Authority to Adopt the Emergency Cap.

The FCC should not accept the arguments of some segments of the wireless industry that it lacks authority to adopt the Emergency Cap. Instead, the Commission should listen to the well thought out comments of USTelecom,[5] CenturyTel,[6] Embarq[7] and others.

The FCC has broad discretion in establishing a universal service fund and developing the cost constraints that may accompany such a fund. As the Fifth Circuit opined, the FCC's "broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service."[8] The Fifth Circuit pointed out that the focus should be on whether customers are well served under the universal service principles, not that any one specific company is entitled to an unfettered draw from the high cost fund. In the words of the Fifth Circuit, "So long as there is sufficient and competitively-neutral funding to enable all customers to receive basic telecommunications service, the FCC has satisfied the Act and is not further required to ensure sufficient funding of every local telephone provider as well."[9] Application of this broad discretion to impose cost controls is particularly appropriate for competitive ETCs who currently receive support based upon not their own costs, but on the costs of the wireline, incumbent ETC. Given that competitive ETC support is not tied to the recipient's costs, cost controls through an Emergency Cap are appropriate.

[5] Comments of USTelecom beginning at p. 3.
[6] Comments of CenturyTel, Inc.
[7] Embarq Comments on the Notice of Proposed Rulemaking (Regarding the Recommended Decision of an Interim Cap on High-Cost Support for Eligible Telecommunications Carriers).
[8] Alenco Communications, Inc. v. FCC, 201 F.3d 608, 620-621 (5th Cir. 2001).
[9] 201 F.3d at 620.

2. The Emergency Cap Satisfied Tests of Competitive Neutrality.

The competitive ETCs claim that by focusing on them, the Emergency Cap is not competitively neutral. However, those arguments ignore the fact that incumbent ETCs' receipt of funds is already capped. The FCC has acted in the past to constrain the growth of the high-cost fund in at least three ways. First, the FCC has imposed caps on the funding of incumbent LECs by capping high-cost loop support, which, as Western Telecommunications Alliance points out, has been capped for over ten years.[10] OPASTCO further points out that

> [S]ince July 2001, when these caps were 're-based' by the Commission, rural ILECs have forgone **over $2.5 billion** in federal high-cost support...Thus, any assertions that an interim cap applied only to the support received by competitive ETCs would not be competitively neutral or equitable are simply baseless.[11] (Emphasis in original.)

Second, the FCC has also capped Interstate Access Support, which has been capped since its inception.[12] Third, the FCC has capped safety valve support available to rural carriers.[13] As USTelecom stated,

> The principle of competitive neutrality does not mean that all ETCs must receive the same level of support or that all ETCs must be treated equally with respect to the distribution of USF support. Rather, competitive neutrality is intended to ensure that no competitor receives an unfair advantage in the market place as a result of the manner in which universal service subsidies are distributed.[14]

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[10] Comments of Western Telecommunications Alliance at p. 2.
[11] Comments of OPASTCO at p. 4.
[12] Comments of Western Telecommunications Alliance at p. 2.
[13] See, Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carrier and Interexchange Carriers, Fourteenth Report and Order, Twenty-Second Order on Reconsideration and Further Notice of Proposed Rulemaking in CC Docket No. 96-45 and Report and Order in CC Docket No. 00-256, 16 FCC Rcd. 11244 (2001) at ¶¶34 and 107. See, also, 47 C.F.R. §54.305(e).
[14] Comments of USTelecom at p. 4-5 citing TCG New York, Inc. v. City of White Plains, 305 F.3d 67, 80 (2nd Cir. 2002) and Qwest Communications International v. FCC, 398 F.3d 1222, 1233 (10th Cir. 2005).

It is also telling that the two largest wireless companies support adoption of the Emergency Cap.[15] In the State of Washington, AT&T, as a wireless, competitive ETC, is one of the largest drawers of high-cost universal service support.[16] Thus, AT&T would be financially affected in significant ways by its own recommendation.

3. Arguments of Advancement of Competitive, Consumer Choice and Enhanced Wireless Offerings are not Well-Founded.

Among the arguments advanced by some components of the competitive ETC industry is that institution of the Emergency Cap would hinder the competitive advancement of consumer choice and the deployment of enhanced wireless offerings.[17] However, such arguments are unavailing.

Recent empirical studies demonstrate that there is no causal connection between the receipt of federal high-cost universal service funds and increased customer choice or increased deployment of wireless services.[18] These studies show that there is no positive correlation between the receipt of federal universal service funds and increasing competitive choice or the availability of wireless services. In the blunt words of Mr. Vantzelfde, "To the extent subsidies to wireless CETCs are intended to increase the availability of wireless service in high-cost areas, the vast majority of funds are simply wasted."[19] The arguments of the wireless ETCs that receipt of high-cost fund benefits competition through increased customer choice and makes wireless service available in rural areas where it otherwise would not be provided are now shown to be

[15] Comments of AT&T Inc. and Comments of Verizon and Verizon Wireless.
[16] USAC Quarterly Reports, first quarter 2007.
[17] See, e.g., Comments of CTIA-The Wireless Association™ and Comments of United States Cellular Corporation and Rural Cellular Corporation.
[18] See, The Effects of Providing Universal Service Subsidies to Wireless Carriers, Kevin W. Caves and Jeffrey Eisenach, Criterion Economics, LLC (June 13, 2007) and The Availability of Unsubsidized Wireless and Wireline Competition in Areas Receiving Universal Service Funds, Nicholas Vantzelfde, Criterion Economics, LLC (June 13, 2007). These two studies are available at www.criterioneconomics.com.
[19] Vantzelfde Study at p. 23.

exactly what many have suspected, a polemic empty from any basis in fact.

THE IDENTICAL SUPPORT RULE SHOULD BE ELIMINATED

In its Recommended Decision, the Joint Board recognized that one of the reasons for the significant growth in competitive ETC receipt of high-cost funds was the identical support rule. Under this rule, the competitive ETC receives support, not on its own costs, but based upon the per-line support of the incumbent ETC. The incumbent's ETC support is fully cost-based. But by definition, the competitive ETC support is not.

An incumbent's ETC support is based on cost recovery of investments already made. The incumbents documents their costs through reports filed with regulatory agencies and which are based upon cost study rules adopted by federal and state regulatory authorities. The incumbent LEC receives support up to two years after the costs have been incurred.

In addition, there are differences in the obligations between the incumbent ETC and the competitive ETC. Some of these examples include the provision of equal access, rate regulation (which may vary in complexity by state) and carrier of last resort obligations. The Joint Board recognized these "fundamental differences" in analyzing whether or not the identical support rule is appropriate.[20]

As pointed out by CenturyTel, "As a result of such disparities, the resulting cost structures are generally very different between the incumbent ETC and the CETC. Therefore, paying identical high-cost support to carriers with very different cost structures and obligations is anti-competitive, not competitively neutral, and should be eliminated."[21]

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[20] Recommended Decision at ¶6.
[21] Comments of CenturyTel, Inc. at p. 7.

THE EMERGENCY CAP SHOULD BE ADOPTED WITH TWO MINOR MODIFICATIONS

OTASCC and WITA support adoption of the Emergency Cap as set forth in the Recommended Decision. However, the commenters in the opening round do point out two minor improvements that could be made to the Joint Board Recommendation.

The first of these is pointed out by the Minnesota Independent Coalition. The point that is made is that there may be an inadvertent gap between the expiration of the Emergency Cap and the adoption of longer term reform if action is unavoidably delayed. Therefore, the Minnesota Independent Coalition recommends that the Emergency Cap remain in effect until a permanent reform plan is implemented or until another determination is made by the FCC.[22] OTASCC and WITA support this recommendation.

The other minor modification is suggested by AT&T. AT&T points out that while wireless carriers can adopt flexible approaches to investment, some planning certainty is beneficial. AT&T suggests that there be a specific date by which a competitive ETC must be approved within a year in order to be eligible to participate in the cap support in the following year. By way of example, AT&T suggests that an applicant would need to be granted ETC status on or before October 1, 2007, to be eligible to draw from the cap support in 2008.[23] Such a limitation makes sense. It would not be beneficial to anyone if a carrier is designated as an ETC in December and then all other competitive ETCs have their support diluted on very short notice for the following calendar year. OTASCC and WITA suggest that the date to be

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[22] Comments of Minnesota Independent Coalition at p. 3-4.
[23] Comments of AT&T at p. 7-8.

used is July 31. This date allows a reasonable period for planning for those affected by designation.[24]

CONCLUSION

OTASCC and WITA strongly urge the adoption of the Emergency Cap. Such a cap is within the authority of the FCC. The Emergency Cap is competitively neutral. The Emergency Cap is simply one of several cost constraints that the FCC has adopted to its oversight of universal service funding.

Respectfully submitted this 21st day of June, 2007.

By: ______________________

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[24] Another option is to impose a moratorium on designations where there are already competitive ETCs receiving high-cost support.